OCTOBER TERM, 1870.

ULYSSES S. C. WHITE,
Appellant,
v.
THE UNITED STATES.
No. 75.

APPEAL FROM COURT OF CLAIMS.

BRIEF AND ARGUMENT FOR APPELLANT.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

ULYSSES S. G. WHITE, *Appellant*,
v.
THE UNITED STATES.
No. 75.

APPEAL FROM THE COURT OF CLAIMS.

Statement of the Case.

The claimant sued in the Court of Claims to recover from the United States additional pay which he claims to be due him under that portion of the Navy Personnel Act of March 3, 1899, section 13 (30 Stat. L., 1007), reading as follows:

"That all officers, including warrant officers, who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service."

The claimant was on January 9, 1877, appointed a civil engineer in the Navy from civil life. He had before that served in the Army six years, seven months and twenty-one days.

The pay of civil engineers of the Navy is fixed by section 1556 of the Revised Statutes, as follows:

"The commissioned officers and warrant officers on the active list of the Navy of the United States, * * * shall be entitled to receive annual pay at the rates herein stated after their respective designations:

* * * * * * * *

Professors of mathematics and civil engineers,

during the first five years after date of appointment,

when on duty..... $2,400;
on leave, or waiting orders..... 1,500;

during the second five years after such date,

when on duty..... $2,700;
on leave, or waiting orders..... 1,800;

during the third five years after such date,

when on duty..... $3,000;
on leave, or waiting orders..... 2,100;

after fifteen years from such date,

when on duty..... $3,500;
on leave, or waiting orders..... 2,600."

This statute creates graduated pay based upon longevity, the annual pay of a civil engineer increasing in strict accordance with the number of years of service.

He would have reached his maximum pay if his service in the Navy had alone been counted, on January 9, 1892. But by reason of credit for prior service in the Army (Finding II, p. 3), under the Act of March 3, 1883 (22 Stat. L., 473), he reached his maximum pay on May 19, 1885, after serving fifteen years in both Army and Navy.

He now claims under the proviso quoted from the Act of 1899, to be entitled to a credit of five years on date of appointment. Computing his pay upon this credit would cause him to reach his maximum on May 19, 1880, instead of May 19, 1885, and thus result in an increase of pay for every year from his appointment until May 19, 1895.

He has received $24,061.64 pay from January 9, 1877, to May 19, 1885. If he is credited with five years' service on date of appointment as provided in the Act of 1899, upon computing his pay with that credit, the total pay for that period would be $27,568.49, a difference of $3,506.85, which he claims.

The Court of Claims holds that the operation of this proviso is prospective only, and that it applies only to pay accruing after June 30, 1899. We maintain that the plain meaning of its words requires a retrospective as well as a prospective construction.

Assignment of Error.

For error in the judgment of the Court of Claims dismissing his petition, the claimant assigns that the Court of Claims erred in not computing his pay, after giving him credit for five years' service on date of appointment as required by the Act of March 3, 1899, section 13, and in not rendering judgment in his favor for the amount thus found due him.

Argument.

The Statute.

Section 13 of the Act of March 3, 1899 (30 Stat. L., 1007), contains the clause on which the present claim is based. The section is printed in full on page 4 of the record, as it appears in the Statutes at Large, but for convenience of reading we separate it into what we consider its constituent clauses, with separate headings, as follows:

OPENING CLAUSE—Pay of Commissioned Officers of the Line, Medical and Pay Corps.

"That, after June thirtieth, eighteen hundred and ninety-nine, commissioned officers of the line of the Navy and of the Medical and Pay Corps shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army;

1st PROVISO—Shore Pay of Such Officers.

"*Provided*, That such officers when on shore shall receive the allowances, but fifteen per centum less pay than when on sea duty;

EXCEPTION TO FIRST PROVISO—Warrant Officers Commissioned, Excepted.

"but this provision shall not apply to warrant officers commissioned under section twelve of this Act;

2d PROVISO—Naval Officers on Shore Duty Beyond Seas to Have Full Pay.

"*Provided Further*, That when naval officers are detailed for shore duty beyond seas they shall receive the same pay and allowances as are or may be provided by or in pursuance of law for officers of the Army detailed for duty in similar places:

3d PROVISO, First Clause—Chaplains to Have Rank.

"*Provided Further*, That naval chaplains, who do not possess relative rank, shall have the rank of lieutenant in the Navy;

3d PROVISO, Second Clause—All Officers Appointed from Civil Life to Have Credit.

"and that all officers, including warrant officers, who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service.

3d PROVISO, Third Clause—Distribution of Prize Money abolished.

"And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war, are hereby repealed;

4th PROVISO—Present Pay Not Reduced.

"*And Provided Further*, That no provision of this Act shall operate to reduce the present pay of any commis-

sioned officer now in the Navy; and in any case in which the pay of such an officer would otherwise be reduced he shall continue to receive pay according to existing law;

5th PROVISO—Retired Officers Not Affected.

"*And Provided Further*, That nothing in this Act shall operate to increase or reduce the pay of any officer now on the retired list of the Navy."

The clause here relied on is the second clause of the third proviso as follows:

"And that all officers, including warrant officers, who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service."

The Natural Meaning of the Words.

Approaching this clause with the sole purpose to find its normal meaning from its terms, we analyze and define it as follows:

"All officers"—this is a comprehensive term to be limited only by the subsequent qualifying words. "Who have been or may be appointed to the Navy"—these words make the same grant to officers whose appointments have been made as to those yet to come. "From civil life" this completes the limitations on the subject, "All officers" and accurately describes this claimant. "Shall on the date of appointment"—this fixes the date when the credit takes effect. "Be credited for computing their pay"—not for rank or retirement, but for pay—not pay for any particular period, but pay in general consequent upon the credit newly applied. "With five years' service"—or, that, for computing his pay, this officer shall be treated as if he had been appointed five years before his actual appointment.

Finding II (p. 3) says:

"If he were, upon the date of his appointment, credited for computing his pay with five years' service, and entitled to be paid from that date, he would receive pay at the following rates:

Three years and 130 days, at $3,000 per annum.	$10,068.49
Five years, at $3,500 per annum.....	17,500.00
Total.....	$27,568.49

or $3,506 85 more than he has previously received."

This is doing exactly what the statute says shall be done. The Court of Claims, in framing the finding of fact, uses the very language of the statute. It expressly says that if what the statute requires is done the claimant will receive what he claims. Thus the plain language of the statute requires the very thing to be done which results in the right to the pay here claimed.

A farther analysis of four phrases in the act makes the meaning still clearer.

(1.) "All officers." If the intent of Congress was not to give a grant to the entire class, the word "officers" alone would have sufficed. The word "all" expresses the entire class described. Its object is to give the credit in every instance to officers appointed from civil life. There are to be no exceptions. The construction which the Court of Claims has placed upon the act would substitute for the words "all officers" the limitation "officers appointed from civil life, still in their original rank who have not yet reached their maximum pay in that rank." A construction which thus transforms the terms of a statute is necessarily unsound.

(2.) Equally significant are the words "who have been or may be appointed." It is true that a few officers already in the service had not yet reached the highest rate of pay in their lowest grades on March 3, 1899, and would thereby become entitled to an increase of future pay by reason of this phrase, even if prospective only; yet when considered in connection with the words "all officers," the words have a far wider significance. Not only are all officers who may be appointed from civil life to have this credit, but "all officers who have been appointed."

To reach the limited meaning ascribed by the Court of Claims to the words "have been appointed" should be added "so recently that they have not yet reached the maximum pay in their lowest grade;" or from the clause the words "who have been or may be" should be subtracted so as to read, "officers appointed." Even then the words would not wholly exclude a past meaning. No rule of statutory interpretation permits such alteration of plain words, complete in themselves. The broad words are inept for a meaning narrowed to the purpose declared in the opinion in this case.

(3.) "On the date of appointment." These words alone are conclusive. The credit takes effect on the date of appointment, neither before nor after; and the consequences of that credit all follow from that date. The words are of exact limitation. On the one hand they forbid the view that pay is given for the constructive service credited before the date of appointment; on the other they direct that the effect of the credit shall not be postponed until some period after the date of appointment. The credit being given, the pay follows by operation of law.

(4.) "For computing their pay." An increase in length of service may produce three consequences in the Navy, as is said in *Hawkins* v. *United States*, 19 C. Cls., 618:

"1. Higher rank resulting from greater length of service;
"2. Earlier period of retirement on the officer's own application after forty years' service, as authorized by section 1443 of the Revised Statutes; and
"3. Increase of pay."

The words here used forbid any change of rank; forbid the use of constructive service in calculating the length of service for retirement, and grant the benefit of that service for computing pay. They are of exact meaning. The word "pay" is not qualified. It is all pay computed upon the credit thus given. The opposite construction re-

quires words to be introduced to limit the pay to be computed to "pay hereafter accruing," or "pay for future service." The claimant's construction says that the credit of service given "on the date of appointment" is to produce the consequence "in computing their pay" which the law grants to such prior service, namely, increased pay from the date of appointment.

The dissenting opinion in this case says (Rec. 7), of these words:

"The words of this proviso are a clear and unequivocal declaration, upon which is based the right of the claimant. They need no interpretation or construction, and are a plain indication by apt and unambiguous words as to the measure of pay."

* * * * * *

"As is quoted in the case of *Jaeger* v. *The United States*, (27 C. Cls., R. 278), 'The clearest guide to the meaning of a statute is the statute itself. If words are plain there is no room for construction or an interpretation.' For these brief reasons I dissent from the conclusion reached in this case."

We rest our case upon this position so stated and regard the remainder of this brief as either only illustrative of it or responsive to the position of the court below.

Authorities Supporting Literal Interpretation.

The principle here claimed has had no recent stronger application than in the case of *Dewey* v. *United States*, 178 U. S., 510. That was a claim for bounty for destruction of enemy vessels. The obvious purpose of the law was to encourage personal gallantry and enterprise (as the dissenting opinion pointed out), by giving a double reward for overcoming a superior force. But the Court held that the words of the statute did not permit an opposing land force to be counted in the comparison and gave only the single reward for a victory over a superior force made up

of land and sea defenses. The decision was rested in the opinion on the principle claimed in this case (pp. 520, 521):

"Of course, our duty is to give effect to the will of Congress touching this matter. But we must ascertain that will from the words Congress has chosen to employ, interpreting such words according to their ordinary meaning as well as in the light of all the circumstances that may fairly be regarded as having been within the knowledge of the legislative branch of the Government at the time it acted on the subject. There is undoubtedly force in the suggestion that in rewarding officers and sailors who have sunk or destroyed the enemy's vessels in a naval engagement it is not unreasonable that all the difficulties, of every kind, with which they were actually confronted when engaging the enemy should be taken into consideration. But that was a matter which we cannot suppose was overlooked by Congress."

"Our province is to declare what the law is, and not, under the guise of interpretation or under the influence of what may be surmised to be the policy of the Government, so to depart from sound rules of construction as in effect to adjudge that to be law which Congress has not enacted as such. Here the language used by Congress is unambiguous. It is so clear that the mind at once recognizes the intent of Congress. Interpreted according to the natural import of the words used, the statute involves no absurdity or contradiction, and there is consequently no room for construction. Our duty is to give effect to the will of Congress, as thus plainly expressed."

This was an extreme case, and the court fully accepted the doctrine that statutes are to be understood in the plain meaning of their words, and not construed by presumptions drawn from their consequences. This is made clear by the forcible statement in the dissenting opinion of the principle overruled by the decision of the court (p. 524):

"Undoubtedly it is our duty to give effect to the will of Congress, but in ascertaining its will the object Congress manifestly sought to attain must be recognized, and should be controlling, unless positively defeated by the language used."

The principle governing the Dewey case requires here that the statute be read in its plain meaning and that the result of "computing his pay" upon the credit given him by the statute be awarded to this officer.

The principle was well stated in *Sturges* v. *Crowinshield*, 4 Wheat., 122,202:

"If, in any case, the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of that instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case, would be so monstrous that all mankind would, without hesitation, unite in rejecting the application."

The same principle is plainly stated in *Bate Refrigerating Co.* v. *Sulzberger*, 157 U. S., p. 36:

"In our judgment, the language used is so plain and unambiguous that a refusal to recognize its natural, obvious meaning would be justly regarded as indicating a purpose to change the law by judicial action based upon some supposed policy of Congress. But, as declared in *Hadden* v. *Collector*, 5 Wall., 107, 111, 'what is termed the policy of the Government with reference to any particular legislation is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the court in the interpretation of the statutes."

The same thing was said in a somewhat different way in *McCluskey* v. *Cromwell*, 11 N. Y., 593, 601:

"Statutes and contracts should be read and understood according to the natural and most obvious import of the language, without resorting to subtle and forced construction for the purpose of either limiting or extending their operation. Courts cannot correct supposed errors, omissions or defects in legislation, or vary, by construction, the contracts of parties. The object of interpretation is to bring sense out of the words used, and not to bring a sense into them."

The change in the point of view from which courts in recent years regard statutes, as illustrated by the cases cited, is philosophically stated by a recent writer (Black on Interpretation of Laws, Preface, p. iii).

"In dealing with these authorities, it has been impossible to overlook the great change which has come over the disposition of the courts with reference to their office as interpreters of the law. It is no longer assumed to be the province of the judiciary either to quibble away or to evade the mandates of the legislature. On the contrary, the modern authorities recognize only one rule as absolutely unvarying, namely, to seek out and enforce the actual meaning and will of the law-making power. Thus, the doctrine of 'equitable' interpretation has become obsolete, the sanctity of the common law is no longer so jealously insisted upon, and the difference between strict and liberal construction has been reduced to a minimum."

A Similar Statute.

A series of cases decided in this Court and the Court of Claims under an earlier statute affecting naval pay affords controlling precedents for this case. That related also to credit for prior service on date of appointment and is as follows, Act of March 3, 1883, 22 Stat. L., 473:

"And all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the Regular or Volunteer Army or Navy, or both, and shall receive all the benefits of such actual service in all respects in the same manner as if all said service had been continuous and in the Regular Navy in the lowest grade having graduated pay held by such officer since last entering the service; *Provided*, That nothing in this clause shall be so construed as to authorize any change in the dates of commission or in the relative rank of such officers: *Provided Further*, That nothing herein contained shall be so construed as to give any additional pay to any such officer during the time of his service in the Volunteer Army or Navy."

The first case under this statute was that of *Hawkins* v. *United States*, 19 C. Cls., 611. The claimant asked the benefit of his prior volunteer service in computing his pay upon entering the Regular Navy in 1870. The Court recognized both the retroactive and the gratuitous nature of the construction claimed and held it sound because the terms of the statute justified it. The opinion says (p. 6, 17):

"The claimant contends that this clause is retroactive in its operation, and has the same effect in bestowing benefits on him, as if it had been in operation before he entered the Regular Navy; and that one of those benefits was to allow him, from the time he was appointed boatswain, a higher rate of pay than, by the Navy pay table, he would be entitled to, if his pay were computed from the date of his appointment to that office.

"On the other hand, the defendants insist on the well-understood rule that, as a general proposition, every law must be held to be only prospective in its operation; and that no law should be held to be retroactive, unless the intent to make it so be clearly manifested by its terms.

"Conceding this, we think it manifest on the face of the clause that it was meant to be retroactive; and it is not for the Government to object to the character which itself has given to its own legislative grant of benefits to own officers. It is, we think, quite impossible for the claimant to 'receive *all* the benefits * * * in *all* respects,' which the clause intends him to receive, if the clause should be held to be prospective only in its operation."

It is to be noted particularly that the Act of 1883 has one important difference from the Act of 1899. The Act of 1899 frankly avows its object to be increased pay; in the Act of 1883, the very grant of pay did not appear on the face of the statute. When the Court of Claims reached the conclusion that increase of pay was within its contemplation at all, there was no difficulty in deciding that the increase was for both past and future years. Here we need ask the latter conclusion only; the former is declared beyond controversy.

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This case was followed by a number in this Court. In *United States* v. *Rockwell*, 120 U. S., 60, the question presented was in what grade the officer should receive the credit for his voluntary service. The Court found the claimant entitled to retrospective credit and to a re-examination of his pay in the grade which he held on July 1, 1870. A similar question occurred in *United States* v. *Green*, 138 U. S., 293, and retrospective credit was given on the same basis.

In *United States* v. *Dunn*, 120 U. S., 250, the question was whether retrospective credit should be allowed for service in the Marine Corps, and it was held that it must be allowed. In *United States* v. *Hendee*, 124 U. S., 309, similar retrospective credit was allowed for service as paymaster's clerk. In *Brown* v. *United States*, 32 C. Cls., 379, it was held that service as a civil engineer in the Navy warranted credit under this statute.

In *United States* v. *Mullan*, 123 U. S., 186, credit was given for continuous service in the Regular Navy as if rendered in the grade held by the officer when graduated pay was given by the Act of July 15, 1870 (16 Stat. L., 330). He was allowed an increase of pay during the time when he held the rank of lieutenant-commander to which he would not have been entitled under any previous law. In *United States* v. *Baker*, 125 U. S., 646, the officer was allowed credit for his service in the Naval Academy and his pay as ensign consequently increased to exceed what was due him while he served as ensign.

The gratuitous character of the back pay granted by this Act of 1883 is evident upon examination of all these cases. These officers had received every cent to which they were entitled under the laws existing when they were in service; yet it was held that Congress by this act, in spite of the complexity of its form and the obscurity of its reference to pay, made a gift of back pay to all these

officers. How fortuitous was this grant is seen by the reported cases showing the following amounts allowed to different officers based upon their previous service:

Hawkins v. *United States*, 19 Cls., 611.....	$2,184.63
Jordan v. *United States*, 19 C. Cls., 621	1,004.86
Dunn v. *United States*, 21 C. Cls., 20; 120 U. S., 251	2,238.10
Rockwell v. *United States*, 21 C. Cls., 332; 120 U. S., 60.....	691.60
Mullan v. *United States*, 123 U. S., 186.....	356.03
Hendee v. *United States*, 22 C. Cls., 134; 124 U. S., 312.....	8,178.01
Baker v. *United States*, 23 C. Cls., 181; 125 U. S, 646.....	836.71
Green v. *United States*, 25 C. Cls., 300; 138 U. S., 298.....	4.17
Brown v. *United States*, 32 C. Cls., 379.....	13,879.56

In the Green case the Court of Claims held him entitled to $796.08, but this court allowed only $4.17, although it was conceded that if he had been commissioned four days earlier, the judgment of the Court of Claims would have been correct. The gift was absolutely arbitrary, but the courts sustained it because Congress gave it in terms which plainly meant it, when the subject-matter was understood.

It could be said of that statute, as is said of this by the Court of Claims, that a prospective operation could have been given to it without its granting back pay. In this very case the claimant received increased pay from the date of the act, March 3, 1883, to May 19, 1885, as well as back pay. The parallel of these two acts is complete; and the same principle which was followed in the cases under the Act of 1883, if followed in the present case, must result in a reversal of the decision of the Court of Claims.

The Reason for the Act.

We do not assume the responsibility of saying why Congress passed this act; it is not necessary to do so; a search

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for legislative motives is not requisite in the presence of plain words.

A court called upon to consider an act, need not understand the reason for the passage of the act, though it is gratifying to find these evident. If the terms of the act are ambiguous, then a search for a theory may be permitted in order to settle the ambiguity. But without ambiguity of expression, an interpretation based on a supposed theory of legislation rather than on the intent as expressed in the words, oversteps the boundaries between the legislative and the judicial province.

An explanation may be suggested. Under the Act of March 3, 1883, construed in the Hawkins case, officers appointed to the Navy from the Naval Academy received, and now receive, credit for computing their pay for their six years of service there at the expense of the Government. (*United States* v. *Baker*, 125 U. S., 646). Ever since that date, when commissioned they have received credit in computing their pay as if that time had been served in their lowest commissioned grade. By the Act of 1883, this principle was extended backward as well as forward. In the case cited Baker received an increase of back pay calculated upon the entire length of his preceding naval service in the Naval Academy. Officers spending an equal time at their own expense in professional education for the Medical Corps or the Corps of Civil Engineers or professors of mathematics or chaplains have begun their service in the lowest grade, with no such credit. They have complained that they should have a like credit for their years of preparation. Congress in this clause admitted the justice of this complaint and did for them what had been done for the Annapolis graduates in 1883. It was done in just the same manner, by a provision which is retrospective as well as prospective. It not only cures the inequality for future, but also corrects the past injustice. Thus this pro-

vision is an extension of the Act of March 3, 1883, to officers appointed from civil life and forms a part of the system established by that act.

The purpose of the system of longevity pay is stated by the Court of Claims, in *Thornley* v. *United States*, 18 C. Cls., 117, to be "to compensate for increased professional knowledge and efficiency in officers by increasing their pay in advance of promotion." Congress has in this provision declared that the professional education of officers appointed from civil life is equivalent in the increase of "professional knowledge and efficiency" to the experience gained by other officers in the Military Academy or in the enlisted ranks of the Navy or Army. It is admitted that this extension of the principle of longevity pay has been made for the future. The only question here is whether it was made retroactive by the terms used in this statute.

The Position of the Court Below.

The opinion of the majority below admits (p. 7) that the words of this proviso, standing alone, "might justify the construction for which the claimant contends."

The Court was unwilling to adopt this construction. An analysis of the opinion in this case and the earlier one in *Royce* v. *United States*, 36 C. Cls., 328, to the same effect, shows that they hold that:

1. The construction makes the act retroactive.
2. The construction results in a gratuity.
3. The construction fails to give effect to the date, June 30, 1899, contained in the opening clause of this section.

In order to support its construction of the statute, the Court in Royce case announced this extreme rule (36 C. Cls., 337):

"True, the Congress have the authority to enact such [retroactive] laws, but in doing so they must use language that will admit of no other meaning."

In the opinion in this case, a somewhat milder form of statement is used (p. 6):

"Retrospective legislation * * * is not looked upon with favor and should not be applied where the language used is susceptible of another meaning."

This means that the Court of Claims, to find the meaning of this statute, asked first the question: Are these words susceptible of another meaning than giving back pay? The first question in the interpretation of a statute is: What is the natural meaning of the words used? The error here is in considering the former question before the latter is asked and answered. The rule is as old as Vattel that "it is not permitted to interpret what has no need of interpretation." The terms of this statute have one plain meaning, entirely clear, as soon as the subject-matter is understood. No question is proper here except to ask "What is the natural meaning of the words used?" since that question is clearly answered by the terms of the statute.

The Rule Against Retroactive Legislation.

The Court of Claims in discussing retroactive interpretation of statutes has extended the application of a well-known principle beyond its reason. Black, Interpretation of Laws, states it (p. 256):

"When the effect of giving to a statute a retrospective construction would be to make it destroy or impair vested rights, or impose new penalties, forfeitures, liabilities, or disabilities, such construction will be avoided, and the statute will be held to apply to future acts and cases only, provided that this can be done by any reasonable interpretation of the language used by the legislature."

This is a more accurate statement of the limits on the rule relating to retrospective interpretations than that based on Sedgwick, quoted from the opinion of the court

below. In all the cases on this subject, this is the only ground on which any presumption exists against a retroactive construction. The rule is thus stated in *Ex Parte* Buckley, 53 Ala., 42:

"Retrospective statutes, when within legislative competency, are not favored, and it is a sound rule of judicial construction that they shall operate prospectively only, unless the terms show a clear legislative intent that they shall operate retrospectively. Cooley's Const. Lim., 369; Sedgwick on Statutes and Constitutional Law, 161. The statutes excluded from judicial favor and subjected to this strictness of judicial construction, statutes which may be properly denominated retrospective, are such as take away or impair vested rights, acquired under existing laws or create a new obligation, impose a new duty or attach a new disability in respect to transactions or considerations already past. *Society, etc.*, v. *Wheeler*, 2 Gall., 139. Such statutes are offensive to the principles of sound and just legislation, and it is of these the authorities to which we have been referred use the term "odious" and other epithets expressive of judicial opprobrium."

In *Hine* v. *Pomeroy*, 39 Vt., 211, it is said:

"Ordinarily, statutes are held to operate prospectively and not retrospectively, unless it appears that they were designed to have the latter operation. When it is sought to have such operation given to a statute, to the impairment of an existing right, or the inflicting of a wrong, established and familiar principles would require the courts effectually to interpose and prevent such results. When without such consequences, the intention is apparent that the law should have such operation, such intention would prevail."

Instances of retrospective statutes sustained are *Stoddard* v. *Smith*, 5 Binney, 355; *Bolton* v. *Jones*, 5 Barr, 145. An examination of all the cases where a strict rule against retrospective statutes has been held, will show that they fall within the rules laid down in the cases above cited.

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The present instance is different. No vested rights are destroyed; no new penalties, forfeitures, or disabilities are imposed. The only new liability declared is a liability of the Treasury of the United States of which Congress is the constitutional guardian and over which it has sole control. The words used by Congress are to be construed in the plain meaning in which Congress had an unquestioned right to use them.

Legislative Gratuities.

The opinion of the Court of Claims treats the granting of a gratuity by Congress as something of so extraordinary a character that all presumptions must be against it. Whatever may be said by philosophic statesmen upon the evils of gratuities, the giving of gratuities to persons of present or past military and naval service is a common feature of congressional legislation.

Of this character is the grant of extra pay to officers of the Regular Army who served in the Mexican War. The Act of July 19, 1848, § 5, 9 Stat. L., 248, granted extra pay to the volunteers of the Mexican War, itself a gratuity. It was not granted to the Regular Army, undoubtedly for the reason (long afterward stated by this court, *United States* v. *Merrill*, 9 Wall., 614) that the regular officer had continuous employment and pay by the United States after the close of the war. Thirty years after the close of the Mexican War, Congress passed an act which the officers of the Regular Army who served in that war claimed entitled them to extra pay. They were sustained by the Court of Claims (*Emory* v. *United States*, 19 C. Cls., 254), and on appeal by this court (*United States* v. *Emory*, 112 U. S., 610). This was a gratuity and retroactive. Examination of the Act of 1879, will certainly show that "the language used is susceptible of another meaning," giving a gratuity to a far more restricted class.

The gratuity to soldiers and sailors, greatest in amount, was the grant of arrears of pension by the Act of January 35, 1879, § 1 (20 Stat. L., 265). The law previously in force had provided that a pension for which a claim had not been presented within five years from the accruing of right, should begin, when allowed, from the date of filing the last evidence necessary to establish it (R. S., § 4709). The Act of January 25, 1879, and its amendment of March 3, 1879 (20 Stat. L., 470), granted in all claims for pensions filed before July 1, 1880, arrears of pension from the date when the title to pension accrued. This grant was made because in the judgment of Congress justice to soldiers of the Civil War demanded it, although its cost was millions.

The additional bounty granted by the Act of July 28, 1866, §§ 12, 13 (14 Stat. L., 32), was a pure gratuity of thousands of dollars from a depleted treasury.

We have already seen that the credit to naval officers for volunteer service was a gratuity under the Act of March 3, 1883, 22 Stat. L., 473.

Another interesting instance of a military gratuity accomplished by a legislative accident is that shown in *United States* v. *Bowen*, 100 U. S., 508. Certain pensions to residents in Soldiers' Homes had by law prior to the Revised Statutes, been paid to the homes, apparently as compensation. In the revision the language of the statute was changed by accident and the pensions given to the veterans themselves. This grant was denied by the executive departments, but was enforced here, although a gratuity occurring purely through inadvertence, without purposed action of Congress.

This court said (p 513):

"The Revised Statutes must be treated as the legislative declaration of the statute law on the subjects which they embrace on the first day of December, 1873."

The case of *Adams* v. *United States*, 20 C. Cls., 116, like the last, grew out of "a change by the Revised Statutes, possibly inadvertently made," says the opinion.

It is not necessary to search the statutes of the United States for others of the numerous instances of this sort. It is for Congress to decide what grants shall be made from the public treasury, and the responsibility rests with Congress and not with the courts. This has been clearly declared by this court in *United States* v. *Realty Co.* (163 U. S., 441):

"Payments to individuals, not of right or of a merely legal claim, but payments in the nature of a gratuity, yet having some feature of moral obligation to support them, have been made by the Government by virtue of acts of Congress, appropriating the public money, ever since its foundation. Some of the acts were based upon considerations of pure charity."

This is an unusual case in favor of retrospective legislation. A prospective sugar bounty law was directly held unconstitutional by the Court of Appeals of the District of Columbia in *United States ex rel. Miles Company* v. *Carlisle*, 5 D. C. App., 138. The question of its unconstitutionality was raised and seriously considered, but not decided, in *Field* v. *Clark*, 143 U. S., 695, as well as in *United States* v. *Realty Co.* itself, but in this case it was held, without deciding whether a prospective sugar bounty would be valid, that the retrospective bounty was valid, although a gratuity, because for the payment of accrued moral obligations of the United States.

This Provision Independent.

The opening clause of § 13 of the Act of March 3, 1899, which we are considering provides that "after June 30, 1899," the pay of certain naval officers shall be changed. The Court of Claims, in the final paragraph of this opinion

(p. 7), says that this date should be carried into the clause now under construction:

"We think the meaning is that after June 30, 1899, 'all officers, including warrant officers, who have been or may be appointed to the Navy from civil life shall, on the day of appointment, be credited, for computing their pay, with five years' service,' thereby fixing the beginning of the pay of all officers so appointed after June 30, 1899."

We respond to this:

1. That neither the form nor terms of the section bear this transportation of this date from one clause to another.

2. That the legislative history of the act shows that this clause is independent of the opening clause of the section.

3. That the independent subject-matter of the several parts of the third proviso requires an independent construction.

Dates Made Contradictory.

The introduction of this date contradicts the date expressly fixed as the date of the thing directed to be done. The clause says that a credit is to be given on a certain date—the date of appointment—and for a purpose named, computing pay. The thing directed to be done is to credit, not to pay. "Credited" is the predicate verb. There is a date given for this—"the date of appointment." It is expressly a retroactive credit. The date "after June 30, 1899," would contradict this date and therefore can not thus be introduced to modify the predicate verb. The Court of Claims sees this and in the passage last quoted introduces it as qualifying the dependent phrase "in computing pay," purely a result of the credit. That is, the court says, it is pay after June 30, 1899, which is to be affected. This would bring the date at the first of the section into this proviso, not as controlling the thing ordered in the proviso to be done, which has its own date fixed,

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but as controlling a result of the thing to be done. This circuity is not the normal use of language. It is a strain to the language to introduce this date to modify this dependent clause. It is erroneous grammatically; it is equally false logically.

The wrong principle adopted at the outset that the plain meaning of the clause is not to be given it, if it can be forced to bear any other, produces such inadmissible consequences and shows its own error.

Legislative History.

The unsoundness of this view can be seen by the fact displayed upon brief examination, that this clause came into the act as a piece of legislation independent of the opening clause of the section.

The bill which became the Act of March 3, 1899, entitled "An Act to Re-organize and Increase the Efficiency of the Personnel of the Navy and Marine Corps of the United States" (30 Stat. L., 1004), was known in its legislative history as H. R. 10403, 55th Congress, 3d Session. Section 13 of the present act passed the House as § 16 of that bill and contained but two clauses, the first, that appearing in the act in substance as the opening clause of the section, and the second, beginning a new sentence, that appearing as the third clause of the third proviso. The bill was reported to the Senate by the Committee on Naval Affairs on January 25, 1899, and this section was then substantially the same in form except that the first clause of the third proviso was introduced as a proviso after the opening clause. It was re-committed to the Committee on Naval Affairs and among a large number of changes made upon its being again reported, § 12 (the present § 13) then appeared with the opening clause much modified, with clauses added corresponding to the first and second provisos and with this proviso appearing for the first time

in its present form and in its present relation to the clauses in regard to Naval chaplains and prize money. These three parts of this proviso remained in the bill in its successive changes. Introduced in this independent way, it should be construed as an independent piece of legislation, like the clauses preceding and following it. The sections referred to, of the bill in its different stages, form an appendix to this brief.

The Subject Different.

Analysis of the subject-matter of this remarkably constructed section shows that this third proviso is made of three pieces of independent legislation, and that the fourth and fifth provisos are in substance provisos to the entire bill and not simply to the opening clause of this section of which they form a part.

In a general way it may be said that of the first seventeen sections of this act devoted to the Navy, all but one are concerned with such matters as the transfer of engineer officers to the line, the composition of the active list, the rules governing retirements and the creation or regulation of certain corps and grades. Section 13 is devoted to pay. But this general division of these sections is not exact, because questions of pay are directly treated in §§ 7, 9, 11, 12 and 15, and changes in pay result from the provisions §§ 1 and 2. On the other hand, § 13 also contains provisions relating entirely to other subjects than pay.

Classification of Naval Officers.

For an understanding of the terms of § 13, the classification of the higher naval personnel must first be understood.

Officers of the Navy are divided into commissioned and warrant officers. The commissioned officers are divided into two general classes, line and staff. The line comprises those officers who have command and who form the

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regular line of promotion from ensign to admiral. The staff consists of six corps: The Medical Corps, the Pay Corps, the Construction Corps and the Corps of Chaplains, Professors of Mathematics and Civil Engineers. The old Engineer Corps is amalgamated with the line by this act (§ 1).

There is a third small class of commissioned officers, created by § 12 of the Navy Personnel Act, the Chief Boatswains, Chief Gunners, Chief Carpenters and Chief Sailmakers, promoted from the warrant officers.

Among the commissioned officers, appointments are made from Annapolis, to the line and the construction corps; and from civil life to the medical and pay corps, and the corps of chaplains, professors of mathematics and civil engineers. In the engineer corps, abolished by this act, the earlier appointments were from civil life, the later from Annapolis. Warrant officers may be appointed either from the enlisted men of the Navy or from civil life.

Analysis of Section 13.

Section 13 consists of an opening clause and of five provisos, each proviso single, except the third, which contains three separate pieces of legislation. These relate to the following subjects:

OPENING CLAUSE—Pay of Commissioned Officers of

a. The Line;
b. The Medical Corps;
c. The Pay Corps.

FIRST PROVISO—1. Pay of Such Officers on Shore;
2. Pay of Warrant Officers on Shore.

SECOND PROVISO—Pay of Naval Officers on Shore Beyond Seas.

THIRD PROVISO—1. Rank of Chaplains;
2. Credit of five years for computing pay to all commissioned and warrant officers appointed from civil life;
3. Repeal of laws distributing prize money or bounty.

FOURTH PROVISO—Pay of Commissioned Officers Not to be Reduced by this Act.

FIFTH PROVISO—Pay on Retired List Not Affected.

Here are nine pieces of legislation relating to various naval subjects and governing various classes of persons, some having direct connection with each other, some quite disconnected.

The opening clause fixes the pay of commissioned officers of the line and of two of the staff corps, the medical and pay corps, after June 30, 1899.

The first proviso fulfills the distinctive office of a proviso by making an exception in the pay of the officers as provided in the opening clause. This is itself subjected to a like exception, though not introduced by a proviso, of a different class of officers. This first proviso is the only one which relates to the same classes of officers considered in the opening clause, and even here the exception introduces another class.

The second proviso is not confined to the line and the two corps named. It relates to the pay of "naval officers." The Comptroller of the Treasury has so decided in the case of Naval Constructor Gillmor (6 Comp. Dec., 331) an officer of another staff corps.

The third proviso contains three absolutely distinct provisions. The first of these gives rank to certain chaplains who previously had none (R. S. §§1395, 1479). This is doubly differentiated from the opening clause because that has no concern either with rank or with chaplains. The

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chief provision of this act relating to rank is in §7 (last proviso) and this really belongs with that section.

The second clause of the third proviso, the one under discussion, gives a credit of five years' service to all officers including warrant officers appointed from civil life. Of the three classes of commissioned officers included in the opening clause, this provision has nothing to do with officers of the line (with a very few exceptions); it concerns the other two classes, medical and pay officers, and in addition the commissioned officers of the corps of chaplains, professors of mathematics and civil engineers and warrant officers. The claimant is not affected by the change of pay made by the opening clause.

The provision next following relates to an absolutely different subject-matter. It has no concern with pay or rank or length of service. The repeal of the laws authorizing the distribution of prize money or bounty, affects not only all commissioned officers, but every sea-going officer or man in the Navy from admiral to apprentice.

The fourth proviso is limited neither to those commissioned officers, whose pay is affected by the opening clause, nor to the changes made in pay by section 13. It declares in general that the present pay of any commissioned officer now in the Navy shall not be reduced by any provision of this entire act. A large class protected by this clause consists of officers of the Engineer Corps transferred to the line by § § 1 to 6 of the same act. Many of these officers would have been reduced in pay on the day of their transfer, March 3, 1899, but were protected by this proviso from that date.

The last proviso relates equally to the entire act in providing that nothing in it shall change the pay of any retired officer. Its scope is therefore wider than the opening clause of § 13. After a complete analysis of this section, the conclusion is plain that upon no sound theory can the

opening date "after June 30, 1899" be made to qualify the verb in a dependent phrase in the third proviso. The Navy Department concedes that the chaplains here given rank are to have it from the same date from which all other staff officers are given rank by § 7, March 3, 1899. But, if "after June 30, 1899," is to be read into the second part of the third proviso, it must also be read into the first. It cannot skip over one into the other.

Passing to the third part of the same proviso abolishing prize money, it cannot be said that a capture made between March 3 and July 1, 1899, would have been distributed in prize. This third part of the third proviso, like the first and second, is an independent piece of legislation, taking effect upon the passage of the act. It affects all the persons named in the opening clause, and many more; but its effect is not for that reason to be postponed to the date contained in the opening clause of the section.

No more can the second part be so read. Some of the persons described in the opening clause and some of those described in this clause are the same. Officers of the medical and pay corps are generally, but not always, appointed from civil life. Occasionally these are appointed from the enlisted ranks of the Navy. Officers of the line are not appointed from civil life. Chaplains, civil engineers and professors, generally appointed from civil life, are not embraced in the opening clause. Thus the classes described are different in the two parts of the act.

Equally the subject is different. The act opens by making a new rate of pay. This clause gives a credit to some officers who have the new rates of pay and to some who retain the old. It relates primarily to credit and not to pay. Pay, under this clause, appears only as an incident of the credit granted. Nor does any reason appear why the date in the opening clause needs to be carried over. The opening clause and the two provisos following are a prospective

pay table for certain officers. There that subject stops and is not resumed. The remaining parts of the section are different in scope from the first and might as well have been placed in some other part of the act, since they relate either to other subjects than pay or equally to the provisions of § 13 and to provisions of other sections.

Two Kinds of Provisos.

In the Royce opinion, this attempt to carry this date through the act is placed upon the rule quoted from Justice Story's opinion in *United States* v. *Dickson*, 15 Pet., 165, that "a proviso carves special exceptions only out of the enacting clause."

The first proviso of this section fulfills this definition and the exception in the last words of the same proviso is itself an instance in substance though not in form, of the same sort of a proviso. See the act, *Ante*, p. 4. The statute under consideration in the case of *United States* v. *Dickson* was exactly of this character.

Not one of the other provisos or pieces of provisos in this section meets to any degree the definition of Justice Story. How does the rank of chaplains or the distribution of prize money form an exception to the pay of the line and two other staff corps? The introduction of this rule into this discussion obscures the real question here, because the proviso here is plainly legislation of an entirely different kind.

There is another kind of proviso than that stated by Justice Story, also judicially recognized. To this second class, these later provisos of this section belong. This use is succinctly stated in *Georgia Banking Company* v. *Smith*, 128 U. S., 174 181:

"It is a common practice in legislative proceedings, on the consideration of bills, for parties desirous of securing amendments to them, to precede their proposed amendments with the term 'provided,' so as to declare that, not-

withstanding existing provisions, the one thus expressed is to prevail, thus having no greater signification than would be attached to the conjunction 'but' or 'and' in the same place, and simply serving to separate or distinguish the different paragraphs or sentences."

The most celebrated instance of this is that referred to by this Court in *Hadden* v. *The Collector*, 5 Wall., 110, the Act of July 2, 1864, § 3, 13 Stat. L., 351:

"The law declaring that in the Courts of the United States that there shall be no exclusion of any witness on account of color, nor in civil actions when he is a party to or interested in the issue tried, is contained in a proviso to a section in the appropriation act of 1864, the section itself directing an appropriation for detecting and punishing the counterfeiting of the securities and coin of the United States."

See also the proviso construed in *United States* v. *Ewing*, 140 U. S., 142.

This use of provisos is so commonplace that it is useless to cite illustrations afforded by half the acts in the Statutes at Large. The last proviso of § 7 of this act is an excellent example of this, a clause just as independent of that to which it is attached as the two separate enactments which follow.

Summary.

The decision of this case rests, we think, upon the plain meaning of the words under discussion, as stated in the early part of the brief. The fundamental error of the Court of Claims is that after seeing the result of this meaning, it resorted to considerations outside the words used to modify this natural meaning. We insist:

I. That all exterior presumptions are inadmissible, the language of the act being plain.

II. That the presumption against retroactive legislation does not apply to laws not affecting vested rights.

III. That there can be no presumption against a grant of back pay to officers or men in the military service.

IV. That the date in the opening clause cannot be brought into the clause under discussion because:

a. This is the kind of proviso described in *Georgia Banking Co.* v. *Smith*, 128 U. S., 181, a piece of independent legislation.

b. This clause relates to a different class of persons.

c. This clause relates to credit and not to pay.

d. This clause already contains a date fixing the time of its predicate verb.

e. The preceding and subsequent clauses of the same proviso not being interpreted as requiring this date, the date cannot be capriciously selected for this clause.

V. That the clause can be read harmoniously with the Act of March 3, 1883, only when read like that Act, retrospectively.

For these reasons we ask a reversal of the judgment below.

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Appendix.

Section 13 of the Navy Personnel Act, as it appears in various stages of legislation, H. R. 10403, 55th Congress, 3rd Session.

As it passed the House of Representatives:

"Section 16. The commissioned officers of the line of the Navy, including staff officers of like grade or rank, other than naval constructors and chaplains, shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army or Marine Corps. And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or other property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy in time of war, are hereby repealed."

As first reported in the Senate, January 25, 1899:

"Section 12. The commissioned officers of the line of the Navy, including staff officers of like grade or rank, other than naval constructors, shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers of corresponding rank in the Army or Marine Corps: *Provided*, that naval chaplains, who do not possess relative rank, shall have the rank of lieutenant in the Navy. And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or other property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy in time of war, are hereby repealed."

As reported to the Senate, February 8, 1899, after recommittal:

"Section 12. That commissioned officers of the line of the Navy and staff officers of like grade or rank shall receive the same pay and allowances, except forage, as are or may be provided by or in pursuance of law for the officers

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of corresponding rank in the infantry of the Army: *Provided*, That officers of the line of the Navy and of the medical and pay corps and chaplains (except officers above the rank of commander, who shall receive, both when at sea and ashore, an amount equal to the pay and allowances, except forage, of officers in the infantry of the Army of corresponding rank), shall, when on sea duty, receive no allowances, but fifteen per centum in addition to the pay of the corresponding rank in the infantry of the Army; and when on shore shall receive the allowances, but fifteen per centum less pay than is now or may be provided by or in pursuance of law for the corresponding rank in the infantry of the Army: *Provided Further*, That when naval officers are detailed for shore duty beyond seas they shall receive the same pay and allowances as are or may be provided by or in pursuance of law for officers of the infantry of the Army detailed for duty in similar places: *Provided Further*, That naval chaplains, who do not possess relative rank, shall have the rank of lieutenant in the Navy; and that all officers above the grade of warrant officers who have been or may be appointed to the Navy from civil life shall, on the date of appointment, be credited, for computing their pay, with five years' service. And all provisions of law authorizing the distribution among captors of the whole or any portion of the proceeds of vessels, or any property hereafter captured, condemned as prize, or providing for the payment of bounty for the sinking or destruction of vessels of the enemy hereafter occurring in time of war, are hereby repealed: And *Provided Further*, That no provision of this act shall operate to reduce the present pay of any commissioned officer now in the Navy; and in any case in which the pay of such an officer would otherwise be reduced he shall continue to receive pay according to existing law."